

Principles and Practices Handout, 2007

Legal Compliance Checklist for Iowa Nonprofits

Governance

(For all nonprofits)

- _____ Has the organization incorporated under Iowa Code 504?
(If not, is it a trust? An association?)
- _____ Is the organization's activity consistent with the purpose stated in the articles of incorporation (or declaration of trust)?
- _____ Does the organization have by-laws?
- _____ Is board activity carried out consistent with the provisions of the bylaws?

(For Iowa nonprofit corporations)

- _____ Does the organization have a certificate of existence? See RMNCA, IOWA CODE § 504.119.
- _____ Is the current number of board members the same as that stated in the by-laws pursuant to RMNCA, IOWA CODE § 504.803?
- _____ Are the current board committees the same as those stated in the by-laws?
- _____ Are the current officer positions the same as those stated in the by-laws pursuant to RMNCA, IOWA CODE § 504.841?
- _____ Is a fiscal year defined in the articles of incorporation or the bylaws?
(If so, is the current fiscal year consistent with that defined in the governing documents?)
- _____ Does the organization regularly file a biennial report with the Iowa Secretary of State pursuant to RMNCA, IOWA CODE § 504.1613?
- _____ Is the registered agent and the registered office stated in the articles of incorporation correct?
(If not, has the organization filed a Change of registered office/registered agent form with the Secretary of State pursuant to RMNCA, IOWA CODE § 504.502?)
- _____ Has the corporation been administratively dissolved pursuant to RMNCA, IOWA CODE § 504A.1421?
(If so, has the corporation filed for reinstatement with the Secretary of State within two years of the dissolution pursuant to RMNCA, IOWA CODE § 504.1423)
- _____ Does the organization keep written minutes of its board meetings pursuant to RMNCA, IOWA CODE § 504.1601?
- _____ Are board member conflicts of interest disclosed and made part of the board minutes?
- _____ Does the organization refrain from making loans to its board members pursuant to RMNCA, IOWA CODE § 504.834?
- _____ Is the corporation delivering program in states other than Iowa?
(If so, has the corporation registered as a "foreign corporation" in those states?)

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Human Resources

- _____ Does the organization avoid reference to age, gender, race, religion, national origin and citizenship in its job descriptions, interviewing and hiring decisions (42 U.S.C. 2000(e) and Iowa Code 216)?
- _____ Does the organization get the job applicant's written permission before criminal background checks are done?
- _____ Does the organization have a written sexual harassment policy and procedure?
- _____ Does the organization regularly withhold taxes from employee income?
- _____ Does the organization make accommodations for persons with disabilities pursuant to the Americans with Disabilities Act (42 U.S.C. § 12101)?
- _____ Does the organization provide protection of employees from exposure to hazardous substances pursuant to OSHA (29 U.S.C. § 651 et seq.)?
- _____ Does the organization allow unpaid leave of up to 12 weeks when employee family members or the employee have serious health conditions pursuant to the Family and Medical Leave Act (29 U.S.C. § 601)?
- _____ Does the organization pay minimum wage, keep required records, and follow the child labor standards set out in the Fair Labor Standards Act (29 U.S.C. § 2011)?
- _____ Does the organization avoid polygraphs of job applicants or employees pursuant to the Employee Polygraph Protection Act (29 U.S.C. § 2002) and the Polygraph Examination law in Iowa (IOWA CODE § 730.4)?
- _____ Does the organization allow employees time off for jury duty pursuant to IOWA CODE § 607A.45?
- _____ Does the organization pay unemployment taxes, or reserve amounts for reimbursement pursuant to IOWA CODE § 96.7(8)?
- _____ Does the organization allow the employee time to vote pursuant to IOWA CODE § 49.109?
- _____ Does the organization allow an employee access to his or her employment records pursuant to IOWA CODE § 91.8?
- _____ Is there a written policy in place regarding "whistle blowers" under Sarbanes-Oxley providing for no reprisals against employees who raise concerns about the operation of the organization?
- _____ Is there a written policy on document retention?
- _____ Do the organization's employees have required licenses (Nurses, psychologists, social workers, etc.)?
- _____ Is the compensation of the five highest paid employees (if over \$50,000) reported on I.R.S. form 990, Schedule A, Part I?
- _____ Is compensation of upper level employees not an "excess benefit," but within the limits described in I.R.C. § 4958?

Fundraising

- _____ Is the organization prepared to disclose on request the percentage of fundraising costs for the last complete fiscal year pursuant to IOWA CODE § 13C.2(2)?
- _____ If the organization has hired a professional fundraiser, is that professional fundraiser registered with the Attorney General pursuant to IOWA CODE § 13C.2(1)?

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- _____ If the organization is fundraising in states other than Iowa, has the organization registered in those other states if required by those states' laws?
- _____ Does the organization provide gift substantiation to donors who made gifts of \$250 or more pursuant to I.R.C. § 170(f)(8)?
- _____ Does the organization provide disclosure of quid pro quo gifts to donors when the gift was in excess of \$75 and the organization gave a return benefit, pursuant to I.R.C. § 6115?
- _____ Does the organization give the donor of non-cash gifts with a value in excess of \$500 a signed I.R.S. form 8283?
- _____ Does the organization decline to appraise non-cash gifts for donors?
- _____ Does the organization report names and addresses of donors of non-cash gifts on I.R.S. Form 990, Schedule B, Part II?
- _____ If the organization sells a non-cash gift with a value in excess of \$5,000 within two years of receipt of the gift, does the organization file I.R.S. form 8282?
- _____ Does the organization use gifts within the specific restrictions set forth by the donor?
- _____ Does the organization report names and addresses of donors and aggregate amounts given (when over \$5,000) on I.R.S. Form 990, Schedule B, Part I?
- _____ Does the organization acknowledge gifts from businesses with the businesses' usual advertising copy?
(If so, is the gift reported as revenue under the corporate sponsorship rules in I.R.C. § 513(i)?)
- _____ Does the organization raise funds through gambling activities?
(If so, does the organization have the license(s) required by Iowa Code 99B?)
- _____ Does the organization collect sales tax on sale of gambling tickets?

Finance

- _____ Are all assets and liabilities of the organization being fully reported on I.R.S. form 990, Part IV?
- _____ Does the organization have an endowment?
- _____ Does the board of directors (or board of trustees), fulfilling its fiduciary duties, regularly review the budget and investment of the organization's assets?
- _____ Does the board spend from the endowment or other investments in a reasonable manner?
- _____ Does the board follow a "total return" process in expenditures from the investments, considering "long-term and short-term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions," pursuant to IOWA CODE § 540A.7?
- _____ Does the board manage the investments as a prudent investor, considering "a. General economic conditions, b. The possible effect of inflation or deflation, c. The expected tax consequences of investment decisions or strategies, d. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible

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and intangible personal property, and real property, *e.* The expected total return from income and the appreciation of capital, *f.* Other resources of the beneficiaries, *g.* Needs for liquidity, regularity of income, and preservation or appreciation of capital, *h.* An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries," pursuant to IOWA CODE § 6333.4302?

- _____ Are the organization's investments "passive investments" (dividends, interest, annuity, rents, etc.) as defined in I.R.C. § 512(b)(1)?
- _____ Does the organization have earned income?
(If so is the earned income from a "trade or business regularly carried on" as described in I.R.C. § 513?)
- _____ Is the earned income from programs, services and products substantially related to the exempt purposes of the organization?
- _____ Is all earned income being reported on I.R.S. form 990, Part VII?
- _____ If the organization has unrelated business income over the credit amount of \$1,000 is the taxable revenue being reported on I.R.S. form 990-T?
- _____ Are the organization's assets used for the charitable purposes and not for pecuniary profit?
- _____ Does the organization limit the distribution of its assets on dissolution pursuant to RMNCA, IOWA CODE § 504.1408?
- _____ Are there outstanding tax exempt municipal bond issues for the organization pursuant to Iowa Code 419?
- _____ Are less than 2% of the bond proceeds being used for cost of issuance?
- _____ Will the average maturity of the bonds not exceed 120% of the average reasonably expected life of the facility being financed?
- _____ Were any of the for-profit parties involved in the bond financed project instrumental in creating or substantially influencing the affairs of the organization?
- _____ Is the organization a party to a fiscal agent agreement?
(If so, are all transactions covered by the agreement being approved by the fiscal agent?)
- _____ Does the organization have an Employer Identification Number ("E.I.N.")?

Tax Exemption

- _____ Does the organization have tax exemption under I.R.C. § 501(c)(3)?
- _____ Is the organization a church or does it have revenue below \$5,000 annually?
(If neither, did the organization file form 1023 with the I.R.S.?)
- _____ Does the organization have "public charity" status?
(If not, is the organization a private foundation?)
- _____ Does the organization have public charity status under the public support test?
(If so, are at least a third of the funds received by the organization coming from public sources? See I.R.S. form 990, Part I)
- _____ Does the organization have an I.R.S. determination letter?
- _____ Is the organization in an advanced ruling period?
- _____ Does the organization have at least \$25,000 of gross receipts a year?
(If so, does it file form 990 or form 990-EZ?)

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- _____ Did the organization file I.R.S. form 990 within five months of the end of its fiscal year?
- _____ If not, did it file an extension of time to file on I.R.S. form 8868?
- _____ Does the organization disclose I.R.S. form 1023 and the last three years' form 990 upon request?
- _____ Does the organization have a membership?
- _____ If the organization owns real property in Iowa; if so does it pay Iowa property tax?
- _____ Has the organization applied for and been granted exemption on the property pursuant to Iowa Code § 427.1(8)?
- _____ Is the Iowa property tax exemption a partial exemption?

Political Activity

(For 501(c)(3) organizations)

- _____ Does the organization engage in lobbying?
- _____ Is the amount of lobbying "insubstantial?"
(If so, are records kept of all facts and circumstances relevant to that determination of "insubstantial": amount of direct contact with legislators, employee and volunteer time for lobbying, cost of advertising about lobbying, etc.)
- _____ Has the organization made a 501(h) election?
(If so, is lobbying activity below the expenditures levels set forth in I.R.C. § 501(h)
-- 20% of the first \$500,000 of the budget, etc.)?
- _____ Does the organization engage in grass roots lobbying, that is, attempt to get the general public to ask their legislator to support or oppose a pending bill?
(If so, are the calculations of what is "insubstantial lobbying" set at ¼ the amount that would be "insubstantial" if the lobbying were direct?)
- _____ Does the organization avoid engaging in political campaign activity?
- _____ Does the organization engage in "voter education" in the campaign?

(For all nonprofit entities)

- _____ Has any federal money been used by the organization for political activity contrary to the Byrd Amendment, 31 U.S.C. § 1352?
- _____ Has any money granted the organization by a private foundation been used for political activity contrary to the terms of the grant or I.R.C. § 4945?
- _____ Has lobbying activity been reported on Form 990, Schedule A, Part VI?
- _____ Does the organization have a paid employee lobbyist and has it used more than \$20,000 within six months for federal lobbying?
(If so, is there compliance with the reporting requirements of the Federal Lobbying Disclosure Act?)
- _____ Is the organization's lobbying activity in Iowa in compliance with Iowa Code 68B?

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Relationship with Other Entities

- _____ Is the organization involved in a joint venture with a for-profit entity?
(If so, does it further the charitable purpose, and does it permit the organization to act exclusively for its exempt purpose and only incidentally benefit the for-profit? Rev. Rul. 98-15)
- _____ Is the organization a parent with a subsidiary or a subsidiary with a parent?
(If so does the parent exercise too much control over the subsidiary – commingling funds, sharing employees and/or board members, sharing office space and equipment, etc.?)

Other regulation

- _____ Does the organization have the required license?
 - Iowa Department of Health, Bureau of Substance Abuse
http://www.idph.state.ia.us/bhpl/substance_abuse.asp
 - _____ Substance abuse programs
 - Iowa Department of Elder Affairs
<http://www.state.ia.us/elderaffairs/services/aliving.html>
 - _____ Adult day services programs (27 Iowa Administrative Code 321 - 27)
 - _____ Assisted Living programs (27 Iowa Administrative Code 321 - 27)
 - Iowa Department of Agriculture and Land Stewardship Animal Welfare Bureau
<http://www.agriculture.state.ia.us/pdfs/new.app.form.pdf>
 - _____ Animal Shelter (Iowa Code 162.4)